IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1891 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHUDAJI TAKHAJI THAKOR - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR MP SHAH for Applicant(s) : 1,MS. KRUTI M SHAH for Applicant(s) : 1,
MR MR MENGDEY APP for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 04/10/2007

ORAL JUDGMENT

Rule. Learned A.P.P. Mr. M.R. Mengdey waives service of the Rule on behalf of the State.

With the consent of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

In this petition, the petitioner has challenged the order dated 26.9.2007 passed below Exhibit 10 in Atrocity Case No.33 of 2004 passed by the learned Presiding Officer, Fast Track Court, Viramgam.

The petitioner is a original accused in the above mentioned Criminal Case on 26.9.2007. On 26.9.2007, the petitioner gave an application to the Court stating that he wishes to discontinue his advocate. Simultaneously, he gave another application also on the same day i.e. on 26.9.2007 stating that he does not have sufficient means to engage an advocate and he may therefore be provided legal aid. Below this application Exhibit 10, the learned Judge passed an order on 26.9.2007 stating that the petitioner is routinely asking for adjournment and today also four witnesses are present. Not only that with malafide intention, the petitioner has discharged his advocate and asked for legal aid. The learned Judge was therefore, of the opinion that the conduct of the petitioner would frustrate the purpose of releasing him on bail. He therefore, while fixing the application of the petitioner for further hearing and

calling for a list of the advocates rendering legal aid, directed that the petitioner be taken in judicial custody till further order.

To my mind, the action of the learned Presiding Officer of Fast Track Court, Viramgam was excessively harsh. It may be that the petitioner might have prayed for adjournment on certain occasions in the past. It is also possible that same might have caused inconvenience to the Court and also to the witnesses. However, without there being anything extra-ordinary, it was not open for the Court to curtail the liberty of the citizen. At least from the impugned order, no extra-ordinary reasons are emerging. To my mind, therefore, the impugned order was wholly illegal and unwarranted.

In the result, the petition is allowed by quashing and setting aside the order dated 26.9.2007 passed below Exhibit 10 in Criminal Case (Atrocity) No.33 of 2004. Direct service is permitted today. Rule is made absolute.

(AKIL KURESHI, J.)

ynvyas